

MEMORANDUM OF UNDERSTANDING  
IMPLEMENTATION OF SECTION 365 OF THE ENERGY POLICY ACT OF 2005 PILOT  
PROJECT TO IMPROVE FEDERAL PERMIT COORDINATION

United States Department of the Interior  
And  
United States Department of Agriculture  
And  
United States Environmental Protection Agency  
And  
United States Army Corps of Engineers

I. Parties and Participating Agencies.

- A. The Parties to this Memorandum of Understanding (MOU) are the United States Department of the Interior (DOI), the United States Department of Agriculture (USDA), the United States Environmental Protection Agency (EPA), and the United States Department of the Army (DOA).
- B. Participating agencies include:
  - 1. Within DOI, the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the Bureau of Reclamation (Reclamation), the Bureau of Indian Affairs (BIA), and the Minerals Management Service (MMS);
  - 2. Within USDA, the U.S. Forest Service (USFS);
  - 3. Within DOA, the U.S. Army Corps of Engineers (USACE); and
  - 4. The EPA.

II. Purpose.

- A. The purpose of this MOU is to establish policies and procedures to implement Section 365 of the Energy Policy Act of 2005, Pub. L. 109-58 (hereafter the "Act"). Section 365 establishes a Federal Permit Streamlining Pilot Project ("Pilot Project") with the intent to improve the efficiency of processing oil and gas use authorizations on Federal lands. Section 365 specifies that this MOU be signed within 90 days of enactment of the Act.
- B. The Act requires that within 30 days after the date of signing of the MOU, all Federal signatory Parties shall, if appropriate, assign to each of the Pilot Project BLM Field Offices identified, an employee with expertise in the regulatory issues relating to the office in which the employee is employed. The Act also requires that each employee so assigned report to the BLM Field Manager in the assigned Pilot Project Field Office not later than 90 days after the date of assignment. The Pilot Project BLM Field Offices are Rawlins and Buffalo, Wyoming; Miles City, Montana; Farmington and Carlsbad, New Mexico; Grand Junction/Glenwood Springs, Colorado; and Vernal, Utah. The Act also requires the Secretary of the Interior to assign to each Pilot Project Office any additional personnel necessary to ensure the effective implementation of the Pilot Project and other related programs administered by the

Field Office, including oil and gas inspection and enforcement activities related to energy development on Federal lands.

- C. This agreement represents an expression of intent between the Parties to work together to further the objectives of Section 365 of the Act with specific emphasis on developing a multi-agency Pilot Project to aid in the streamlining and coordinating of federal permit processing for onshore oil and gas operations on Federal lands.

### III. Authorities.

- A. The primary authority for this MOU is Section 365(c) of the Energy Policy Act of 2005 (Public Law 109-58). That section specifically references:
  - 1. Consultations and the preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. § 1536);
  - 2. Permits under section 404 of the Federal Water Pollution Control Act (33 U.S.C. § 1344);
  - 3. Regulatory matters under the Clean Air Act (42 U.S.C. § 7401 *et seq.*);
  - 4. Planning under the National Forest Management Act of 1976 (16 U.S.C. § 472a *et seq.*); and
  - 5. Preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*).
- B. Section 365(f) of the Act specifies that the Secretary of the Interior shall assign any additional Department of the Interior personnel to the Pilot Offices necessary to ensure the effective implementation of the Pilot Project and other programs administered by the Pilot Offices, including inspection and enforcement related to energy development on Federal lands in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 *et seq.*).
- C. Section 365(g) of the Act amends section 35 of the Mineral Leasing Act (30 U.S.C. § 191) to establish the Permit Processing Improvement Fund.

### IV. Principles and Goals.

- A. Principles for implementing this MOU include:
  - 1. The Pilot Project Offices will initially focus on interagency coordination and cooperation in the processing of permits required to support oil and gas use authorizations on Federal lands.
  - 2. The Pilot Project Offices will maintain or enhance high standards of safety and environmental protection through an effective oil and gas inspection and enforcement program for operations on Federal lands.
  - 3. Process streamlining and increased interagency efficiency, including elimination of duplication between Federal and state agencies, will be an important measure of success.
  - 4. All participating agencies will seek improved information sharing and use, as well as an improved understanding of respective agency roles and responsibilities.

5. An important measure of success will be the increased ability to process Applications for Permit to Drill (APDs) in a more timely manner.
  6. A more rapid response to demands for oil and gas production on Federal lands will support the Nation's increased need for energy resources.
  7. A more consistent approach among BLM Field Offices, and greater certainty in processing time requirements, are essential for improved customer service.
  8. The financial resources made available through Section 365 should be used to enhance the capability to process oil and gas use authorizations, not as a replacement for base agency resources and responsibilities.
  9. Interagency coordination mechanisms established through the Pilot Project should allow for adequate flexibility to adapt to changing demands and technologies related to oil and gas development.
  10. Coordination with State agencies with expertise and responsibilities related to oil and gas use authorizations are an important component of a successful Pilot Project.
  11. All permitting actions in the Pilot Offices are expected to promote responsible stewardship of Federal subsurface and surface resources.
- B. Goals for implementing this MOU include:
1. Creation of better staff relationships among the participating agencies to improve performance of the Pilot Offices;
  2. Placement of participating agency resources in locations that most effectively promote timely processing of APDs and associated agency approvals;
  3. Focusing of appropriate BLM resources on inspection and enforcement activities;
  4. Identification of new or improved interagency practices that should be used in other offices;
  5. Identifying new or improved ways to increase the efficiency of the APD process;
  6. Testing a variety of process improvement concepts in the Pilot Offices;
  7. Preparation of a comprehensive Report to Congress that clearly identifies the lessons learned in the Pilot Offices;
  8. Establishment of interagency coordination mechanisms that can adapt to changing demands or circumstances;
  9. Measurement of increases in productivity resulting from additional resources provided through Section 365 of the Act; and
  10. Identification of state agency coordination opportunities that could result in improved processing of oil and gas authorizations.

V. Roles, Responsibilities and Delegation of Authority.

A. Department of the Interior.

1. The Bureau of Land Management.

- a. General regulatory and management responsibilities. The BLM administers more than 261 million surface acres of public lands and 700 million acres of subsurface mineral estate (Federal land beneath surface lands owned or managed by other Parties, such as the USDA Forest Service, National Park Service, and US Fish and Wildlife Service).
- b. Pilot Project responsibilities. The BLM will administer the Pilot Project. In this capacity, the BLM will:
  - (1) Provide office space and general administrative support to other participating agency personnel assigned to the Pilot Offices;
  - (2) Establish oil and gas use authorization priorities to effectively coordinate interagency efforts;
  - (3) Coordinate periodic interagency contacts and meetings among the participating agencies to assess progress and resolve issues;
  - (4) Distribute funds to agencies participating in the Pilot Project;
  - (5) Prepare, in cooperation with the participating agencies, the required report to Congress;
  - (6) Work closely with the participating agencies to identify efficiencies in processing of oil and gas authorizations;
  - (7) Evaluate its APD process and work with the other participating agencies to improve its efficiency; and
  - (8) Oversee the implementation of this MOU to assure that the principles and goals of this MOU and the Pilot Project are achieved.
- c. Delegation of Authority. The BLM Field Office Manager is the Authorized Officer with respect to the BLM responsibility for approval of oil and gas use authorizations and inspection and enforcement on Federal lands managed by BLM.
- d. Anticipated Resource Needs. BLM will provide additional staff expertise as necessary to meet the specific needs of the individual Pilot Offices in satisfying the requirements of the Act. Such expertise may include a wide variety of physical, biological and technical support positions added as contract, temporary, term, or permanent positions, plus resources provided by the other participating agencies.

2. The Fish and Wildlife Service.

- a. General regulatory and management responsibilities. FWS is responsible for assisting other Federal agencies and the public in the conservation, protection, and enhancement of fish, wildlife, plants, and their habitats. A myriad of Federal statutes, executive orders, regulations and policies have

been enacted to ensure that environmental conservation is given full weight during project planning and implementation, including: the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742a – 742j), Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. § 661 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*), Migratory Bird Treaty Act (16 U.S.C. §§ 703 - 712), and the Bald and Golden Eagle Protection Act (16 U.S.C. §668). In particular, Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. §§ 1531 *et seq.*), requires that Federal agencies ensure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitat. Federal regulatory agencies identified by Section 365 of the Act are required to consult with the FWS on projects potentially affecting any of these resources. Further, the Migratory Bird Treaty Act (MBTA; 16 U.S.C. §§ 703-712), prohibits the taking, killing, possession, and transportation of migratory birds, their eggs, parts and nests, except when specifically authorized by the Secretary of the Interior. The FWS consults on projects potentially affecting freshwater or marine resources and water quality. In accordance with Section 404(b)(1) of the Clean Water Act, the FWS provides advisory review for wetland protection. The FWS also has jurisdiction by law for specific permitting actions and by special expertise for other actions pursuant to the National Environmental Policy Act. Through these efforts, the FWS seeks to ensure that impacts to fish and wildlife resources are adequately described and that mitigation needs are met.

- b. Pilot Project responsibilities. The FWS will:
- (1) Assign appropriate FWS staff to assist and support the BLM Pilot Offices, as appropriate;
  - (2) Work in an integrated manner with the appropriate BLM Field Office to expedite necessary consultation and coordination procedures, including those required pursuant to Section 7 of the Endangered Species Act;
  - (3) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations;
  - (4) Assist BLM as needed in other components of the oil and gas management program on Federal lands, including ESA section 7 monitoring;
  - (5) Coordinate its requisite reviews and integrate its decision making processes with the various BLM processes, including land use planning (including development or revision of Resource Management Plans), oil and gas leasing, and issuance of drilling permits. This integration will facilitate the development of new processes and procedures that will help to reduce uncertainty at the APD stage, resulting in substantially streamlined final reviews; and

- (6) Expedite its review of APDs, while concurrently engaging with BLM as a member of its land use planning team.
  - c. Delegation of Authority.
    - (1) All FWS Pilot Program staff will be under the direct supervision of the FWS.
    - (2) This MOU will not affect signature authority within the FWS.
    - (3) The FWS staff located within BLM Pilot Project Field Offices, or pilot program staff located within the FWS Field Office, will have the authority and responsibility to:
      - (a) Identify issues and needed information regarding oil and gas use authorizations;
      - (b) Identify and implement process streamlining techniques; and
      - (c) Review and coordinate applicable BLM efforts as they may affect FWS authorities and responsibilities.
  - d. Anticipated Resource Needs.
    - (1) The FWS will provide necessary staff resources to the BLM at the Pilot Project Offices. This includes FWS expertise regarding wetland consultation, migratory birds and raptors, NEPA, environmental contaminants, and ESA. All of these staffing obligations will not necessarily require any one individual but rather may require several individuals.
    - (2) The FWS will provide approximately 10 full time equivalent employees (FTEs) to fulfill initial obligations under the Pilot Project. This figure may change as actual workload and capability needs are more clearly identified for each Pilot Office.
3. The Bureau of Indian Affairs.
- a. General regulatory and management responsibilities. BIA is responsible for the administration and management of 56 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. There are 562 federal recognized tribal governments in the United States. Developing forestlands, leasing assets on these lands, directing agricultural programs, protecting water and land rights, developing and maintaining infrastructure and economic development are all part of the agency's responsibility.
  - b. Pilot Project responsibilities. The BIA will:
    - (1) Assign appropriate BIA staff to the BLM Farmington Field Office;
    - (2) Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination with Navajo interests in the checkerboard landownership area;

- (3) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations; and
    - (4) Assist BLM, as requested, in other components of the oil and gas management program on Federal lands or subsurface mineral estate.
  - c. Delegation of Authority. Authority to act on oil and gas use authorization issues will be delegated to the lowest appropriate level.
  - d. Anticipated Resource Needs. BIA will provide one position to BLM for carrying out its Pilot Project responsibilities. That person will be referred to as the Navajo Permit Coordinator. The Navajo Permit Coordinator will be a BIA employee whose function is to coordinate with the Navajo Tribe, Eastern Navajo Chapters, and Navajo families living in the checkerboard landownership area.
4. The Minerals Management Service.
- a. General regulatory and management responsibilities. The MMS Minerals Revenue Management (MRM) Division collects, accounts for and distributes revenues associated with mineral production from leased Federal and Indian lands.
  - b. Pilot Project responsibilities. The MRM will be responsible for transferring 50 percent of the onshore oil and gas rental income from the United States Treasury to the “BLM Permit Processing Improvement Fund”, established by Section 365(g) of the Act, for the administration of the Pilot Project Offices.
  - c. Delegation of Authority. Authority to act on oil and gas related management actions under the Pilot Project will be delegated as MMS determines to be appropriate.
  - d. Anticipated Resource Needs. No additional resource needs, beyond those already in place for revenue management, have been identified at this time.
5. The Bureau of Reclamation.
- a. General regulatory and management responsibilities. Reclamation is responsible for administering federal water projects in 17 Western states. Reclamation is the largest wholesaler of water in the country bringing water to more than 31 million people and providing one out of five Western farmers (140,000) with irrigation water for 10 million acres of farmland. Reclamation is also the second largest producer of hydroelectric power in the western United States. Through an existing national interagency agreement, dated March 25, 1983, the BLM Carlsbad and Farmington Field Offices lease and approve APDs on Reclamation lands.

- b. Pilot Project responsibilities. Reclamation will:
  - (1) Assign appropriate Reclamation staff to support both the BLM Carlsbad and Farmington Field Offices;
  - (2) Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination with Reclamation responsibilities; and
  - (3) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations.
- c. Delegation of Authority. Authority to act on oil and gas related management actions will be delegated to the lowest appropriate level.
- d. Anticipated Resource Needs. Reclamation will provide BLM with one Reclamation staff position to facilitate and expedite cooperative planning, compliance with any requirements that must be met in order for Reclamation lands to be leased, and the processing of APDs. This position would be a shared position between the Carlsbad Field Office and the Farmington Field Office.

B. Department of the Army.

- 1. The U.S. Army Corps of Engineers.
  - a. General regulatory and management responsibilities. The USACE is responsible for administering laws for the protection and preservation of waters of the U.S., pursuant to the requirements of section 10 of the Rivers and Harbors Act (RHA) of 1899, section 404 of the Clean Water Act (CWA) of 1972, and section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. Under the RHA, the USACE may authorize work and or structures in or affecting the course, condition, location, or capacity of navigable waters of the U.S. Under the CWA, the USACE may authorize the discharge of dredged or fill material into waters of the U.S., using the least environmentally damaging practicable alternative.
  - b. Pilot Project responsibilities. The USACE will:
    - (1) Expedite environmental permits in accordance with the purpose, terms, and conditions of this MOU;
    - (2) Consult with the BLM regarding an adjustment of priorities under this MOU or establishment of relative priorities under this MOU if the current and/or projected workload of priority projects and activities exceeds the USACE ability to provide the services specified in this MOU;
    - (3) Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination with USACE responsibilities;

- (4) Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations;
    - (5) Assist BLM, as requested, in other components of the oil and gas management program; and
    - (6) Provide the BLM an annual summary report of progress made under this MOU. This report will describe achievements, including any improvements the USACE has documented in coordinating and improving the efficiency of environmental reviews and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOU.
  - c. Delegation of Authority. The District Engineer or his or her designee is the final decision maker for USACE actions related to oil and gas use authorizations on Federal lands. If the USACE project manager rendering final action on a permit application occupies a position funded under section 365(g) of the Act, the final decision maker will be at least the supervisor of that person.
  - d. Anticipated Resource Needs. Given existing and projected workloads, no single BLM Pilot Field Office requires a full time USACE position to ensure that the processing of necessary permits under Section 404 of the Clean Water Act are given high priority over other USACE workloads. The USACE will, if necessary, provide additional staff resources to affected USACE State Offices to satisfy its responsibilities under section 365 of the Act.
- C. Department of Agriculture.
- 1. The U.S. Forest Service.
    - a. General regulatory and management responsibilities. The USFS is responsible for the surface management of 192 million acres of National Forest System (NFS) Lands. The Mineral Leasing Act of 1920 as amended and the Mineral Leasing Act for Acquired Lands define the role of the Forest Service in the management of leasable energy resources, including oil and gas. The Forest Service cooperates with the BLM to ensure that management goals and objectives for oil and gas exploration and development activities are achieved, that operations are conducted to minimize effects on surface resources, and that the land affected by operations is rehabilitated. The BLM issues and administers oil and gas leases on NFS lands only after the Forest Service has made a leasing availability decision and taken the action necessary for the BLM to offer available lands for lease. Once a Federal lease on NFS lands is issued, the Forest Service has full responsibility and authority to approve and regulate all surface-disturbing activities associated with oil and gas exploration and development through analysis and approval of the Surface Use Plan of Operations (SUPO), a component of an APD.

- b. Pilot Project responsibilities. The USFS will:
- (1) Assign to each Pilot Office that includes NFS lands an employee to work in partnership with the BLM. This employee will have responsibility to facilitate the timely processing, implementation, and inspection of oil and gas-related permits on NFS lands. Duties of this employee will include:
    - (a) Providing a communication link between the BLM Pilot Office and the local Forest Service Office;
    - (b) Assisting in determining skills and personnel the USFS must provide to ensure efficient and timely processing of requests for leases, Surface Use Plans of Operations, and associated project proposals;
    - (c) Serving as project manager for proposed oil and gas projects on NFS lands, including leasing analyses, APDs, pipelines, roads and other projects required for the development of oil and gas resources;
    - (d) Assisting in coordinating and conducting field reviews of proposed oil and gas projects on NFS lands, including onsite reviews;
    - (e) Ensuring that oil and gas-related permit applications on NFS lands are processed in compliance with the requirements of Sec. 366 of the Energy Policy Act of 2005 and BLM's Onshore Order No. 1; and
    - (f) Ensuring that inspections of all oil and gas drilling and producing operations on NFS lands are carried out yearly and that remedial actions are taken when operations are not in compliance with surface use plans, applicable Land and Resource Management Plans, and/or statutory and regulatory requirements.
  - (2) Develop an action plan within four months of the establishment of the Pilot Offices. The action plan will:
    - (a) Identify internal process challenges and propose process efficiencies; and
    - (b) Establish USFS procedures for conducting permitting and administration of oil and gas operations on NFS lands covered by the Pilot Offices.
  - (3) Within six months of the establishment of the Pilot Offices, review pending projects (APD backlog) on NFS lands covered by the Pilot Project and designate timeframes and checkpoints for progress on active projects and identify those that are inactive and can be removed from consideration.

- (4) Twice yearly the Pilot Project Liaison will report to the Forest Supervisor and BLM Field Manager successes and challenges associated with the Pilot Project and make recommendations to improve efficiencies and cut timeframes for processing APDs on NFS lands. The report will also include an estimate of pending lease applications and APDs, and progress on inspection and enforcement of operations on NFS lands.
- c. Delegation of Authority. Signatory authority for approval of actions related to oil and gas on NFS lands is identified in Forest Service Manual 2820.
- d. Anticipated Resource Needs. The USFS anticipates the initial resource assignment to be four positions. This may change as experience is gained in the Pilot Offices. The Forest Service will also provide other personnel, as necessary, to individual Pilot Offices. Other personnel include those with specific expertise necessary to meet the intent of the Act, such as planning/NEPA, archeology, wildlife, and inspection and enforcement.

D. Environmental Protection Agency.

- 1. General regulatory responsibilities. The EPA is responsible for administering a wide range of environmental laws. EPA responsibilities relevant to the oil and gas development permitting process include, but are not limited to, commenting on an EIS under section 309 of the Clean Air Act (CAA), the authority to participate in the section 404 Clean Water Act (CWA) permit process, and the authority to issue, and/or review state- and tribe- issued, permits for activities that involve discharges of pollutants subject to the requirements of the National Pollutant Discharge Elimination System or the CAA.
- 2. Pilot Project responsibilities. The EPA will:
  - a. Work in an integrated manner with the appropriate BLM Field Office to expedite the necessary consultation and coordination related to EPA responsibilities;
  - b. Work closely with the participating agencies to identify efficiencies in processing oil and gas authorizations;
  - c. Assist BLM, as requested, in other components of the oil and gas management program;
  - d. Continue general coordination and consultation with BLM on oil and gas activities on Federal lands; and
  - e. Conduct annual coordination reviews with BLM to analyze changing workloads and processes to determine if review or process changes are appropriate to achieve greater efficiency in the processing of oil and gas use authorizations.
- 3. Delegation of Authority. Authority to act on areas of EPA responsibility related to oil and gas development on Federal lands will be delegated to the lowest appropriate level.

4. Anticipated Resource Needs. Assignment of specific personnel to the BLM Pilot Offices does not appear necessary at this time because a significant portion of EPA's responsibilities related to the Clean Water Act and the Clean Air Act have been authorized to be administered by the respective states.

VI. Measures of Success or Change for the Pilot Program.

A. Success Measures. Measures of success for the Pilot Program include:

1. The streamlining of and increased interagency efficiency in processing APDs and associated agency approvals, including elimination of duplication between Federal and state agencies;
2. The increased ability to more timely process and issue APDs that will withstand administrative and judicial challenge; and
3. Maintenance or enhancement of high standards of safety and environmental protection through an effective oil and gas inspection and enforcement program.

B. Data for Measuring Success. In each Pilot Project Office, the following, at a minimum, will be tracked and measured:

1. The total number of APDs received, processed, and approved;
2. The elapsed time from receipt to approval, including the time required for major APD steps or components;
3. Inspections completed and the time and resources needed for each inspection;
4. The number and percentage of leases found to be in substantial compliance with applicable standards; and
5. Process efficiencies identified and implemented and approximations of time and resources saved by such efficiencies.

C. The information identified in the preceding paragraph will be collected for three years after enactment of the Act and will be compared to the same parameters in each Field Office for the previous three years.

VII. Principal Contacts.

A. U.S. Forest Service.

Director, Minerals and Geology Management  
1400 Independence Ave., SW  
Washington, DC 20250

B. Department of Interior.

1. Bureau of Land Management.  
Assistant Director, Minerals, Realty, and Resource Protection  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

2. U.S. Fish & Wildlife Service.  
Assistant Director, Fisheries and Habitat Conservation  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240
  3. Bureau of Reclamation.  
Deputy Commissioner for Operations  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240
  4. Bureau of Indian Affairs  
Regional Director, Navajo Regional Office  
Gallup, New Mexico, 87305
  5. Minerals Management Service.  
Associate Director, Minerals Revenue Management  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240
- C. Environmental Protection Agency  
Director, Office of Federal Activities  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460
- D. U.S. Army Corps of Engineers.  
Headquarters  
Chief, Regulatory Programs  
441 G Street, NW  
Washington, DC 20314

#### VIII. Funding

- A. Section 365(g) of the Energy Policy Act of 2005 amends Section 35 of the Mineral Leasing Act (30 U.S.C. 191) by authorizing funding to "...the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal land under the jurisdiction of the Pilot Project offices...."
- B. Section 365(h) of the Energy Policy Act of 2005 authorizes the Secretary of the Interior to expend or transfer funds as necessary to the identified agencies participating in the Pilot Project.

- C. The details of the levels of support to be furnished to the FWS, BIA, Reclamation, USACE, Forest Service, and EPA by the BLM with respect to funding and personnel will be developed in specific Interagency Agreements, contingent on the availability of funding.
- IX. Report to Congress. No later than 3 years after the date of enactment of the Act, the Secretary of Interior is required by Section 365(e) of the Act to submit to Congress a report that:
  - A. Outlines the results of the Pilot Project to date, and
  - B. Makes a recommendation to the President regarding whether the Pilot Project should be implemented throughout the United States.
- X. Duration. The Act mandates the establishment of a Fund for the seven Pilot Project Offices' expenditures through fiscal year 2015. Expansion of the Pilot Project is dependent upon the report to Congress required by Section 365(e) of the Act and the Secretary of the Interior's recommendation and the President's subsequent action on the recommendation.
- XI. Modification. If the Parties decide to change the scope of the Pilot Project, this MOU will be revisited and modified as necessary. All Parties potentially affected by a modification must sign the modification for it to be effective.
- XII. Meetings. The participating agencies plan to meet on a bi-annual basis to discuss the progress and lessons learned associated with the Pilot Project. Additional coordination meetings or conference calls may be held as needed.
- XIII. Dispute Resolution. If a dispute arises under this MOU that is not resolved informally between or among the Parties, then any Party may pursue the following dispute resolution procedure:
  - A. The Party that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other interested Parties. The Parties will engage in discussions in an attempt to arrive at a consensus and resolve the dispute.
  - B. If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute, then the dispute may be elevated to the Parties' respective headquarters-level officials, or their designees. The headquarters-level officials for the Parties will engage in discussions in an attempt to arrive at a consensus. If consensus is not achieved by the headquarters-level officials within thirty (30) calendar days of their receipt of the statement of dispute, the Parties will promptly elevate the matter to the principal policy makers for the respective Parties, who will resolve the matter.
  - C. The time limits in the preceding paragraph may be extended on the mutual agreement of the Parties to the dispute.
- XIV. Supplemental Agreements. Subsequent to the signing of this MOU, additional Federal or state interagency agreements may be required for the purposes of outlining more specific interagency relationships or for transferring funds from the BLM to such state or Federal agencies.

- XV. No Private Right of Action and Limited Applicability. This MOU is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a person against the United States, its agencies, its officers, or any person. This MOU does not direct or apply to any person outside of the signatory Parties.

ACCORDINGLY, the Parties have signed this Memorandum of Understanding on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

  
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SECRETARY OF THE INTERIOR

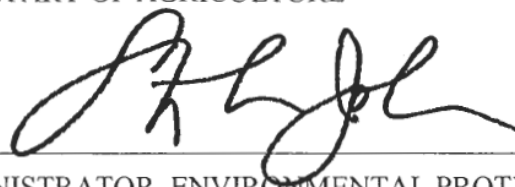
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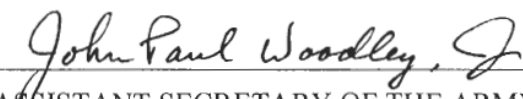
OCT 19 2005

DATE

  
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ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

OCT 18 2005

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ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

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DATE